

where circumstances render it unnecessary, send a registered or certified Notice and Demand Letter ("NDL") to the respondent. The NDL will describe specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The NDL also will state the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

(c) *Request for compromise.* Any person receiving a NDL provided for in paragraph (b) of this section may, within the time specified, deny the violation, or submit matters explaining, mitigating or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in § 502.603(b), in compromising a penalty claim, the Commission may consider litigative probabilities, the cost of collecting the claim and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such compromise agreement is set forth as appendix A to this subpart.) This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official. Upon compromise of the penalty in the agreed amount, a duplicate original of the executed agreement shall be furnished to the respondent.

(2) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this subpart is delegated to the Director, Bureau of Enforcement.

[49 FR 44418, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993, as amended at 61 FR 51233, Oct. 1, 1996]

§ 502.605 Payment of penalty: Method; default.

(a) *Method.* Payment of penalties by the respondent is to be made as follows:

(1) By bank cashier's check or other instrument acceptable to the Commission;

(2) Upon execution of a promissory note containing a confess-judgment agreement, by periodic regular installments, with interest where appropriate, by bank cashier's check or other instrument acceptable to the Commission; or

(3) By combination of the alternatives in paragraphs (a) (1) and (2) of this section.

(b) All checks or other instruments submitted in payment of claims shall be made payable to the Federal Maritime Commission.

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under § 502.603, or compromised and agreed to under § 502.604, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such defaulting respondent is a licensed freight forwarder, such default also may be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

Pt. 502, Subpt. W, App. A

46 CFR Ch. IV (10–1–98 Edition)

APPENDIX A TO SUBPART W—EXAMPLE
OF COMPROMISE AGREEMENT TO BE
USED UNDER 46 CFR 502.604

Compromise Agreement

FMC File No. _____

This Agreement is entered into between:
(1) the Federal Maritime Commission,
hereinafter referred to as Commission, and
(2) _____, hereinafter referred to
as Respondent.

Whereas, the Commission is considering
the institution of an assessment proceeding
against Respondent for the recovery of civil
penalties provided under the [appropriate
statute], for alleged violations of section
_____;

Whereas, this course of action is the result
of practices believed by the Commission to
have been engaged in by Respondent, to wit:
[General description of practices and dates
or time period involved]

Whereas, the Commission has authority
under the Shipping Act of 1984 and the Ship-
ping Act, 1916, to compromise and collect
civil penalties; and,

Whereas, Respondent has terminated the
practices which are the basis for the allega-
tions of violation set forth herein, and has
instituted and indicated its willingness to
maintain measures designed to eliminate
these practices by Respondent, its officers,
directors or employees.

Now Therefore, in consideration of the
premises herein, and in compromise of all
civil penalties arising from the alleged viola-
tions, Respondent and the Commission here-
by agree upon the following terms and condi-
tions of compromise and settlement:

1. Respondent shall make a monetary pay-
ment to the Commission herewith, by bank
cashier's check, in the total amount of
\$_____.

2. Upon acceptance in writing of this
Agreement by the Director of the Bureau of
Enforcement of the Commission, this instru-
ment shall forever bar the commencement or
institution of any assessment proceeding or
other claim for recovery of civil penalties
from the Respondent arising from the al-
leged violations set forth above.

3. It is expressly understood and agreed
that this Agreement is not, and is not to be
construed as, an admission by Respondent to
the alleged violations set forth above.

(Respondent's Name)

By: _____
Title: _____
Date: _____

Approval and Acceptance

The above terms, conditions and consid-
eration are hereby approved and accepted:

By the Federal Maritime Commission:

Director, Bureau of Enforcement

Date: _____

[49 FR 44418, Nov. 6, 1984. Redesignated at 58
FR 27211, May 7, 1993, as amended at 61 FR
51233, Oct. 1, 1996]

**Subpart X—Paperwork Reduction
Act**

**§502.991 OMB control numbers as-
signed pursuant to the Paperwork
Reduction Act.**

This section displays the control
numbers assigned to information col-
lection requirements of the Commis-
sion in this part by the Office of Man-
agement and Budget (OMB) pursuant
to the Paperwork Reduction Act of
1980, Pub. L. 96-511. The Commission
intends that this section comply with
the Act, which requires that agencies
display a current control number as-
signed by the Director of OMB for each
agency information collection require-
ment:

Section	Current OMB control no.
502.27 (Form FMC.12)	3072-0001

[49 FR 44369, Nov. 6, 1984. Redesignated at 58
FR 27211, May 7, 1993]

PART 503—PUBLIC INFORMATION

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